

No credit can issue unless the claimant shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

March 23, 2000

Dear Xxxxx:

This letter is in response to your letter dated January 17, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please provide a written response which will confirm and clarify my understanding of Informational Bulletin 86-54 as it applies to the following leasing transactions: (1) tangible property/equipment, (2) forklifts and material handling equipment (3) aircraft, (4) registered motor vehicles.

COMPANY leases various types of equipment in all 50 states. COMPANY is registered in IL as a retailer. When we enter into true lease transactions with our customers, we either pay sales tax to the vendor or self assess Lessor's use tax upfront. At the end of the lease term, we either sell the equipment at FMV to the lessee or sell the equipment at FMV to an independent 3<sup>rd</sup> party.

For (1) tangible property/equipment and (2) forklifts and material handling transactions, assuming sales tax was paid to the vendor at time of original purchase, is it proper for COMPANY to report the sale of the equipment at the end of the lease term as a taxable sale on our return, show the tax due, and show the tax credit? Hence, assuming the credit equals or exceeds the amount due at the end of lease sale, our return would show a net result of no sales tax due to be remitted to IL from the sale of the equipment.

For (1) and (2) above, assuming lessor's use tax was self assessed at time of original purchase, is it proper for COMPANY to remit the sales tax due from the end of lease sale then complete a refund/credit request form to obtain relief from any additional sales tax which is not due at the end of lease sale?

For (3) aircraft and (4) registered motor vehicles above, what is the proper treatment when (a) sales tax was paid to the vendor and (b) lessor's use tax was self assessed?

It is common practice for COMPANY to file the RUT 25 return when we enter into true lease transactions of aircraft and motor vehicles. What return should be used to report

the end of lease sale and related tax credit when the equipment type is aircraft and/or vehicles/

How does the ability to obtain this tax credit change if COMPANY were not registered as a retailer? Is this Informational Bulletin supported by Regulations and Statutes or is it simply DOR policy/practice?

Thank you for your prompt response. Please call me with questions. I can be reached at #####.

When lessors sell tangible personal property that has come off of true leases and such lessors are not otherwise engaged in the business of selling like-kind tangible personal property, the such sales are generally considered non-taxable occasional sales as described in 86 Ill. Adm. Code 130.110, enclosed.

If the lessors are also sellers of like-kind property, then such sales are generally subject to Retailers' Occupation Tax. See also Section 130.220(c), which may be of interest in determining the tax properly due. However, if such lessors paid Illinois Use Tax to their supplier upon their original purchase, a deduction is available against their Retailers' Occupation Tax liability on the subsequent sale. See Informational Bulletin FY 86-54, enclosed, for details. Please note that FY86-54 does not apply to automobiles.

The retailer may take a deduction on his monthly return for the amount of tax paid to the supplier, so long as it does not exceed the amount of tax collected from the customer. If no tangible personal property is sold, no Retailers' Occupation Tax liability is incurred. If lessors self-assessed Use Tax on a return instead of paying such tax to suppliers, the above deduction is not allowable. Such lessors may recover the previously paid tax only by filing a claim for credit. Provisions regarding claims made to the Department can be found at 35 ILCS 120/6.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See the enclosed copy of 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b). Taxpayers should not make adjustments on their next return.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.